

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KALITTA AIR, LLC,

Plaintiff,

Civil Action No. 12-CV-13554

vs.

HON. BERNARD A. FRIEDMAN

GSBD & ASSOCIATES, LLC, et al.,

Defendants.

ORDER DENYING THE WESTMAN'S MOTIONS TO DISMISS

Defendant Scott Westman has filed a *pro se* “Motion to Dismiss Defendant on all Counts” [docket entry 62]. Defendant Cynthia Westman has filed a *pro se* “Motion to Dismiss Defendant on Common Law Conversion Count (VI) (6), Common Law Conspiracy Count (VIII) (8), Equitable Relief Count (X)(10) [docket entry 89]. Defendants seek dismissal on the grounds that they had no involvement in the alleged scheme and did not profit from it.

These motions must be denied because they do not seek dismissal for any of the reasons listed in Fed. R. Civ. P. 12(b) (i.e., lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, insufficient process or service of process, failure to state a claim or failure to join a required party). Defendants’ argument – essentially, that they were not involved and did nothing wrong – goes to the merits of the claims, not to whether claims has been stated and are procedurally proper. Defendants therefore do not seek dismissal under Rule 12(b) but rather summary judgment under Rule 56, and generally a party may not seek summary judgment until after the opposing party has had a fair opportunity to conduct discovery. Accordingly,

IT IS ORDERED that defendant Scott Westman's motion to dismiss [docket entry 62] is denied. The hearing on this motion is canceled.

IT IS FURTHER ORDERED that defendant Cynthia Westman's motion to dismiss [docket entry 89] is denied. The hearing on this motion is canceled.

Dated: March 4, 2013

s/Bernard A. Friedman
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE

I hereby certify that a copy of the foregoing document was sent to parties of record on March 4, 2013 electronically or by U.S. mail.

s/Michael Williams
Relief Case Manager for the Honorable
Bernard A. Friedman